

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 16.06.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.1827 of 2017

and

C.M.P.No.9851 of 2017

The Oriental Insurance Company Limited,
Eswaran Koil Street, Pondicherry.

...Appellant/2nd Respondent

versus

1. Padma
2. Rajammal
3. Minor Hari Prasad
4. Minor Banu Priya
5. Mangai
6. Chockalingam

.. Respondents/Petitioner 1 to 5 &
1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 15.06.2005 and made in M.C.O.P. No.934 of 2001 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Cuddalore.

For Appellant : Mr. M. Krishnamoorthy

J U D G M E N T

The Appellant/Insurance Company has filed this appeal aggrieved against the quantum of compensation awarded by the Tribunal.

2. The deceased, Pandurangan, aged 49 years, alleged to be earning a sum of Rs.10,000/- per month, met with an accident on 18.12.1999 in which he sustained grievous injuries. In spite of treatment, the deceased succumbed to the injuries on 30.12.1999. The claimants, viz., the first and second wife, aged 37 and 32 years respectively and minor children, aged 12 and 9 respectively, filed the claim petition claiming compensation in a sum of Rs.11,00,000/-.

3. The Tribunal, considering the oral and documentary

evidence, awarded a sum of Rs.3,54,500/= under various heads, the break-up of which is as here under :-

Loss of Income	-	Rs.3,30,000 /-
Loss of consortium	-	Rs. 10,000/-
Loss of love and affection	-	Rs. 10,000/-
Funeral expenses	-	Rs. 2,000/-
Loss of Estate	-	Rs. 2,500/-
		Rs.3,54,500/-

Challenging the compensation awarded by the Tribunal as excessive and disproportionate, the appellant has filed the present appeal.

4. Inspite of repeated notices having been taken to the respondents, the same could not be served on the respondents. It is submitted by the learned counsel for the appellant that the entire award amount has been deposited before the Tribunal. May be, the respondents are not responding to the notice as they would have already received the compensation from the Tribunal. Be that as it may. However, the said fact would not deter this Court from testing the merits of the contentions advanced by the appellant assailing the award passed by the Tribunal. Therefore, the matter is taken up for disposal on merits.

5. The point for consideration before the Tribunal was whether the deceased died due to the injuries sustained by him in the accident and if so whether the claimants, as legal representatives and dependents of the deceased, are entitled to compensation.

6. The Tribunal during the course of enquiry has taken note of the counter filed by the second respondent/Insurance Company. It is evident from the said counter that the insurance company has not raised the specific plea that death was not on account of the injuries sustained in the accident. Though no ground/plea has been advanced on the above aspect, however, the Insurance Company has been permitted to lead evidence on the above aspect as well. PW.2 an eye witness to the occurrence has deposed about the accident and the manner in which it happened. Though it is the contention of the insurance company that the deceased Pandurangan died due to Heart Attack, which is evident from the death certificate, however, the entries made therein in the said certificate has been disowned by the persons, who are alleged to have made it. However, other documentary evidence reveals that the deceased sustained injuries on the chest and it is opined that the said injuries to the chest could have been the cause for his death.

7. Considering the fact that the deceased died within 12

days of the accident and that he was hospitalised during the said period, the Tribunal, relying upon the oral and documentary evidence, held that death was on account of the injuries sustained by the deceased in the accident. The said finding arrived at by the Tribunal is based on the evidence and, there being no contra evidence pointed out by the appellant or perverse finding of the Tribunal, this Court is not inclined to interfere with the said finding.

8. So far as the quantum of compensation is concerned, the monthly income of the deceased has been taken at Rs.3,750/- and deducting 1/3rd towards personal expenses and adopting multiplier of 11, the loss of dependency has been quantified at Rs.3,30,000/- (Rs.2500 X 12 X 11). The Tribunal awarded a sum of Rs.10,000/- towards loss of consortium; Rs.10,000/= towards love and affection; Rs.2,000/= towards funeral expenses and Rs.2,500/= towards loss to estate. In all, the Tribunal quantified the compensation payable at Rs.3,54,500/-.

9. The learned counsel for the appellant is not able to point out any discrepancy in the fixation of compensation by the Tribunal. The Tribunal has conservatively fixed the monthly income and arrived at the loss of dependency. The Tribunal, under the various other heads has also awarded amounts, which are on the lower side and cannot be said to be disproportionate or excessive. Therefore, on an overall consideration of the entire matter, this Court is of the considered view that no interference is warranted either with the finding arrived at by the Tribunal or the compensation awarded.

10. In the result, the appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

srk/rkp/GLN

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Cuddalore

2. The Section Officer,
VR Section,
High Court, Madras.

C.M.A. No.1827 of 2017
and
C.M.P. No.9851 of 2017

NRK(CO)
GN(10/04/2018)